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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

**FINAL UPDATED FRAMEWORK FOR THE NATIONAL SYSTEM OF
MARINE PROTECTED AREAS AND RESPONSE TO COMMENTS**

AGENCY: National Marine Protected Areas Center, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

ACTION: Notice of availability of the final updated Framework for the National System of Marine Protected Areas of the United States and response to comments on Draft Updated Framework.

SUMMARY: The Department of Commerce and the Department of the Interior (DOI) jointly propose an updated Framework for the National System of Marine Protected Areas of the United States (Framework). The Framework is required by Executive Order 13158 on Marine Protected Areas (MPAs). This Framework provides overarching guidance for collaborative efforts among federal, state, commonwealth, territorial, tribal and local governments and stakeholders to implement an effective National System of

MPAs (National System) from existing sites, build management capacity among MPA programs, coordinate collaborative efforts to address common management issues and identify ecosystem-based gaps in the protection of significant natural and cultural resources for possible future action by the nation's MPA authorities. This document updates the previous version of the Framework, completed in November 2008, using experience gained implementing the National System and advice from the Marine Protected Areas Federal Advisory Committee and MPA programs.

FOR FURTHER INFORMATION CONTACT:

Lauren Wenzel, Acting Director, National Marine Protected Areas Center, 301-713-7265 or lauren.wenzel@noaa.gov.

Copies of the updated Framework can be downloaded or viewed on the Internet at marineprotectedareas.noaa.gov. Copies can also be obtained through the contact person noted above.

SUPPLEMENTARY INFORMATION:

I. Background on MPA Framework

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Protected Areas Center (MPA Center), within the Office of National Marine Sanctuaries, in cooperation with the Department of the Interior (DOI), completed the *Framework for the National System of Marine Protected Areas of the United States* (Framework) to meet requirements under Executive Order 13158 on Marine Protected Areas (Order) in November 2008. NOAA and DOI updated this Framework to reflect

five years of implementation experience as well as advice from MPA management agencies and the Marine Protected Areas Federal Advisory Committee. The purpose of this notice is to notify the public of the availability of the updated Framework and to respond to public comment received on a draft update published October 27, 2014.

Executive Order 13158 calls for the development of a National System of MPAs to “enhance the conservation of our Nation’s natural and cultural marine heritage and the ecologically and economically sustainable use of the marine environment for future generations.” Established in November 2008, the National System provides a mechanism for MPA managers to voluntarily collaborate on shared management challenges; strengthen linkages among sites to enhance the management of marine resources; and build management capacity.

This proposed updated Framework is streamlined for greater clarity and readability, has an increased focus on the functions of the National System, and describes the role of the MPA Center in coordinating and supporting the National System. It also includes substantial revisions to the criteria for cultural resources, adding a criterion that allows MPAs created by tribes and indigenous people to be eligible for the National System.

II. Comments and Responses

On October 27, 2014, NOAA and DOI (agencies) published the updated Framework for public comment (79 FR 63899). By the end of the two-month comment period, five individual submissions had been received. Several of the comments raised more than one issue, so related comments have been summarized and grouped below into

thematic categories. For each of the categories listed below, a summary of comments is provided, and a corresponding response provides an explanation and rationale about changes that were or were not made in the final updated Framework.

MPA Networks and New MPAs

Comment: The updated Framework puts a greater emphasis on expanding MPA networks and creating new MPAs, moving the focus from more pressing needs of existing sites. Moreover, the focus on ecosystem connectivity may not be appropriate for existing MPAs, and may not serve a larger conservation purpose.

Response: The development of MPA networks is a widely recognized marine conservation tool, acknowledged to be effective in providing the spatial links needed to maintain ecosystem processes and connectivity, as well as improving resilience of ecosystems and the communities that depend on them. NOAA and DOI believe that encouraging the science-based creation of MPA networks is fundamental to fulfilling the goals of the National System of MPAs. This focus on enhancing ecosystem connectivity will actually help realize the achievement of existing conservation objectives of MPAs.

The updated Framework notes the importance of fostering effective management of existing MPAs as well as identifying priorities for conservation where new MPAs may be an appropriate solution. Contributing to planning for new MPAs is not a major focus of the updated Framework, but part of an overall approach to developing an effective and representative National System of MPAs.

Defining and Implementing “Avoid Harm” Provision

Comment: The updated Framework should provide more clarity regarding definitions and implementation of the requirement in Executive Order 13158 for federal agencies to “avoid harm” to the resources protected by an MPA.

Response: The updated Framework notes that the Executive Order does not provide new legal authority for any federal agency or the MPA Center to review activities of any other federal agency or to create different standards for existing reviews. Instead, the implementation of Section 5, and the national policy it articulates, is achieved using existing legal authorities that shape how federal action agencies identify, review, mitigate, or otherwise alter their activities based on impacts to natural or cultural resources of National System MPAs. NOAA and DOI believe that given the importance of individual agency authorities in implementing this requirement of Executive Order 13158, no single definition of “harm” is possible. The important context of each agency’s authorities will govern agencies’ analyses of harm, including major versus minor or direct versus indirect harm.

The language in the Executive Order that stipulates that federal agencies avoid harm “to the maximum extent practicable” allows for the consideration of important social and economic implications of proposed activities within an MPA. Where appropriate, and upon request by one or more agency, the MPA Center may provide technical assistance (e.g., guidance on best practices), coordination, or facilitation to agencies seeking to avoid harm to National System MPAs.

Social and Economic Importance of the Marine Environment

Comment: The updated Framework lacks a discussion about the social and economic importance of the marine environment to local communities and economies.

Response: The agencies have modified the Framework to more fully acknowledge the social and economic importance of the marine environment in the section on “Benefits of an Effective National System” as well as the introduction.

Role of Regional Planning Bodies

Comment: The updated Framework should not reference linkages between the National System of MPAs in assisting Regional Planning Bodies in potential work to plan new MPAs, as these Bodies have not been established by statute and could unnecessarily restrict access for certain human uses.

Response: Regional Planning Bodies (RPBs) were called for in the Final Recommendations of the Interagency Ocean Policy Task Force, and are a key component of the National Ocean Policy and the Framework for Effective Coastal and Marine Spatial Planning. Insofar as the RPBs, or equivalent regional planning efforts may consider MPAs and other forms of place-based conservation within the broader mosaic of ocean management, NOAA and DOI will provide expertise on MPA issues and provide information and tools to support decisions about place-based management. The

Framework has been updated to recognize that regional planning bodies are but one type of regional marine management initiative, and they are referenced as such.

National System of MPAs and Magnuson-Stevens Act

Comment: The updated Framework should clarify that MPAs must be managed in a manner consistent with existing laws. NOAA and DOI should clarify that the concept of “sustainable fisheries” is to be implemented within the context of the Magnuson-Stevens Fishery Conservation and Management Act.

Response: The purpose of the updated Framework is to provide a common reference for all federal, state, territorial and tribal programs who wish to participate in the National System of MPAs. As such, it must address all authorities relevant to MPA governance, not solely the Magnuson-Stevens Fishery Conservation and Management Act. The updated Framework makes clear that it is to be implemented in the context of existing authorities.

Monitoring and Evaluation

Comment: Monitoring and evaluation efforts to determine the effectiveness of the current National System of MPAs should be a priority. The MPA Center should provide an analytical basis for identifying which MPAs that are accomplishing their goals and which are not. The MPA Center should publish a biennial “State of the National System” report as called for in the Executive Order.

Response: The role of the MPA Center related to monitoring and evaluation is to build the capacity of federal and state marine protected area programs to more effectively manage natural and cultural marine resources, and to serve as a unique and neutral source of marine protected area-related science, information and tools for coastal and ocean decision-makers. Individual MPA programs are responsible for conducting their own monitoring and evaluation, and assessing progress toward program and site-level goals. Periodically, the MPA Center may undertake an evaluation of the National System itself, with the aim of identifying opportunities for improving the collaboration among the nation's MPA programs, including addressing gaps in spatial protection for important areas. For example, in October 2013, the MPA Center published, *Marine Protected Areas of the United States: Conserving Our Oceans, One Place at a Time* – a summary of the state of all US MPAs and of the National System.

Tribal Representation

Comment: The updated Framework should consider including more than one tribal representative to the National System Programs Workgroup. Tribal interests are diverse, and having a single representative appointed to speak for other tribes is a concern.

Response: The updated Framework states that there will be one member of the National System Workgroup for each participating MPA program. Therefore, each tribal government formally participating in the National System of MPAs would have membership on the Workgroup. In addition, the Marine Protected Areas Federal

Advisory Committee advises NOAA and DOI on issues related to cultural resource management, including areas managed by and important to tribes, and has established a Cultural Heritage Resources Workgroup to provide expertise on these issues.

Funding

Summary: NOAA should be realistic about what funding will be available and what can be accomplished with existing funding. It should also include an estimate of funding needed to guide implementation of the updated Framework.

Response: NOAA and DOI believe that the updated Framework is not intended to be an implementation plan, and detailed information on funding is not appropriate for this document. The updated Framework does note that implementation of activities will be dependent on levels of funding.

Dated: March 11, 2015.
Daniel J. Basta,
Director,
Office of National Marine Sanctuaries,
National Ocean Service,
National Oceanic and Atmospheric Administration.

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